

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CARL LEE HANKINS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

FILED

JUN 20 1967

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I

JURISDICTIONAL STATEMENT

Appellant, Carl Lee Hankins (hereinafter referred to as "Hankins") was indicted by the Federal Grand Jury for the Southern District of California on December 29, 1965. ^{1/} The indictment contained six counts alleging that on or about December 9, 1965, Hankins aided and abetted one Robert W. Deverell in making false claims against the government in violation of Title 18, United States Code, Section 287 and Section 2 [C. T. 2-8].

^{1/} C. T. refers to Clerk's Transcript.

On January 31, 1966 Hankins was arraigned in Los Angeles, California and entered a plea of not guilty to the charges contained in the above-mentioned indictment [C. T. 22]. Trial by jury commenced on February 17, 1966 before the Honorable Irving Hill, United States District Judge [C. T. 23].

Judge Hill granted the defendant's motion for acquittal on Counts one, two, four and six [C. T. 24]. On February 18, 1966 the jury returned a verdict finding defendant Hankins guilty on Counts three and five of the indictment. On March 18, 1966 the court sentenced Hankins to four years incarceration on Count three and four years incarceration on Count five, said sentences to run consecutively [C. T. 26].

On March 29, 1966, a notice of appeal was filed pursuant to Rule 37(a)(1) of F. R. C. P. [C. T. 28].

The jurisdiction of the District Court was based upon Sections 287 and 2 of Title 18, United States Code. This Court has jurisdiction to review the judgment of the District Court pursuant to Title 28, United States Code, Sections 1291 and 1294.

II

SPECIFICATION OF ERROR

- A. Was the verdict based upon the uncorroborated testimony of accomplices?
- B. Should this Court sustain a verdict which was based upon the uncorroborated testimony of

accomplices?

III

STATEMENT OF FACTS

On December 29, 1965, the Grand Jury for the Southern District of California returned a six-count indictment against Robert W. Deverell (hereinafter referred to as "Deverell"), James A. Smith (hereinafter referred to as "Smith"), and Carl Lee Hankins [C. T. 28]. This indictment alleged that on or about December 9, 1965 Deverell cashed six postal money orders at six different places. It further alleged that Deverell knew that these money orders had never been issued by the United States Post Office. Defendants Smith and Hankins were charged with aiding and abetting the commission of the crimes charged in the indictment.

Appellant's co-defendants, Deverell & Smith each plead guilty to one count of the indictment [R. T. 116, 154]. ^{2/} On February 17, 1966 defendant Hankins' trial by jury commenced [C. T. 23]. Defendant Hankins was found guilty by the jury on Counts three and five of the indictment [C. T. 25].

The Government called Deverell as its witness [R. T. 98]. Deverell admitted endorsing each of the six money orders [R. T. 100-103]. Deverell testified that he received the six money orders

^{2/} "R. T. " refers to Reporter's Transcript.

from defendant Hankins [R. T. 103], that Hankins directed him to endorse the money orders [R. T. 104], and that Hankins received the proceeds from nearly all of the money orders that were cashed [R. T. 105, 107, 108, 109].

The Government also called Smith as its witness [R. T. 139]. Smith testified that Hankins asked him to fill out some money orders [R. T. 143]. Smith testified that he filled out each of the six money orders in the presence of Hankins and Deverell [R. T. 146-148]. Smith also testified that Hankins instructed Deverell on how to cash the money orders [R. T. 148-149]. Smith admitted that Hankins had given him some of the proceeds from the money orders that were cashed [R. T. 155].

The Government called Jeanette Tucker to testify as a witness in this case [R. T. 75]. Miss Tucker testified that Hankins came to her residence on December 9, 1965 at approximately 8:00 a.m. [R. T. 75-76]. That Hankins visited for a short time and told Miss Tucker that he had some money orders [R. T. 77, 78]. Miss Tucker testified that Hankins returned to her home at about noon, December 9, 1966, and he was accompanied by Deverell and Smith [R. T. 78-80]. Miss Tucker saw them go into her bedroom and write on the money orders [R. T. 81]. However, Miss Tucker did not know what they were writing on these money orders [R. T. 81-82]. After they finished writing Hankins, Deverell and Smith returned to their automobile. Miss Tucker rode with Hankins, Deverell and Smith for a short distance [R. T. 83]. During this brief automobile ride Miss Tucker heard Hankins tell Deverell to

"try in the market across the street" [C. T. 84]. There is no testimony in the record that Miss Tucker participated in the preparation or the cashing of the money orders.

In addition, the Government presented evidence showing that Hankins' fingerprint was found on Exhibit 6, one of the money orders involved in the action [R. T. 125-127, 163-165].

The defendant, Hankins did not present any testimony in its case [R. T. 165]. However, on defendant's motion the court acquitted Hankins on Counts one, two, four and six because the money orders involved in those counts were not shown to have been presented to the United States for payment [R. T. 172, 176].

On February 18, 1966 the jury found defendant Hankins guilty on Counts three and five of the indictment [C. T. 25]. Hankins was sentenced to four years incarceration on Count three and four years incarceration on Count five, said terms to be served consecutively [C. T. 26].

IV

ARGUMENT

- A. CONTRARY TO APPELLANT'S CONTENTION, APPELLANT WAS NOT CONVICTED SOLELY UPON THE UNCORROBORATED TESTIMONY OF AN ACCOMPLICE.
-

Appellant's sole contention before this Court is dependent upon the premise that Hankins was convicted solely upon the

uncorroborated testimony of accomplices. Appellee disputes this position, in that the facts do not support the premise upon which appellant relies. The record is clear that the fingerprints of appellant were found on one of the money orders involved in this crime [R. T. 125-127, 163-165]. The record is clear that six money orders were discovered missing [R. T. 58-59] and that appellant had in his possession six money orders [R. T. 103, 146-148, 77-78]. It is not material that appellant was acquitted on the count involving the money order on which appellant's fingerprint was found, because the evidence is uncontradicted that appellant had this money order in his possession with the others for which he was convicted.

Even jurisdictions which do require corroboration of an accomplice's testimony would find the fingerprint corroboration present in this case more than sufficient. Braham v. State of Alaska, 376 P.2d 714, 715 (1962); and People v. Ray, 26 Cal. Rptr. 825, 828 (2nd D. C. A. 1962).

In the case now before this Court the testimony of Deverell, Smith and Miss Tucker (assuming for purposes of argument that she is an accomplice) operates to corroborate each others testimony. While mutual corroboration by accomplices is not generally considered sufficient in jurisdictions which require corroboration, it is submitted that this fact may be considered in attempting to evaluate the trustworthiness of the accomplice's testimony.

Appellant argues that Miss Tucker is an accomplice. This argument is premised on the facts that Miss Tucker's house was

used to make out the money orders, that Miss Tucker provided the pen and pad and that Miss Tucker knew that Deverell, Hankins and Smith were going to cash the money orders. Appellee submits that those facts do not justify the conclusion that Miss Tucker was an accomplice to this crime. It is well established that an accomplice to a crime is one who unites with another person in the commission of a crime, voluntarily and with common intent to commit the crime. See Ing v. United States, 278 F.2d 362, 365 (9th Cir. 1960).

The only conceivable act of Miss Tucker that could be construed as a step in the commission of the crime is letting Hankins use her house and providing a pen and pad. Miss Tucker had known Hankins since 1963 [R. T. 86], so it is not unusual that she would allow Hankins into her house. Giving Hankins a pen and pad is a completely innocent act, because the record fails to show any evidence that Miss Tucker knew this pen and pad were to be used in the commission of a crime. Further, the record shows that Miss Tucker did not know what Hankins and Smith were writing on the money orders, that Miss Tucker was in no way counseled or informed as to what Hankins intended to do with the money orders except immediately prior to the cashing of the first money order [R. T. 84], that Miss Tucker did not participate in the cashing of the money orders and that Miss Tucker did not receive any of the proceeds from the cashed money orders. The record is also completely void of any evidence to show that Miss Tucker had any intent whatsoever to commit this crime or any other. It

Ellis v. United States, 321 F.2d 931 (9th Cir. 1963) wherein the defendant raised a corroboration issue like the issue now before this Court, and the Court rejected this contention by stating:

"The existing rule we have refused to change on many occasions; some quite recently. We again refuse." (Emphasis added) Id. at 933.

The reason for this rule appears to be based upon the concept that the trier of fact can determine whether the testimony of an accomplice is to be trusted, and the weight it is to be given. The jury was given the normal Mathes & Devitt instruction concerning the testimony of an accomplice [R. T. 212-213]. This instruction warns the jury that it is to treat such testimony with caution and in order to convict it must be believed beyond a reasonable doubt. See Mathes & Devitt, Federal Jury Practices & Instructions (West Pub. 1965) §9.04, p. 113. Considering the cautionary instruction, it is respectfully submitted that the prevailing Federal Rule on the testimony of an accomplice is well founded and should be reaffirmed by this Court.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the District Court be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Dennis E. Kinnaird

DENNIS E. KINNAIRD

